FIRST AMENDMENT COALITION

April 15, 2019

Assemblymember Todd Gloria
State Capitol
Sacramento, CA 95814

RE: AB 1184 (SUPPORT WITH AMENDMENTS)

Dear Assemblymember Gloria:

I write on behalf of the First Amendment Coalition (FAC) to express this organization's strong support for the goal of your Assembly Bill 1184, which would provide badly needed clarity for the *minimum* amount of time, two years, that state and local agencies must retain email communications under the California Public Records Act ("CPRA"). However, FAC is concerned that the current wording of the bill may override various sections of the Government Code and the Local Records Program administered by the Secretary of State that in many cases may require email communications to be retained more than two years. As explained more fully below, we propose to amend the bill to make clear that it establishes a *minimum* time period for email retention but does not abrogate other statutes and regulations that require longer retention periods.

FAC is a nonprofit and nonpartisan public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. Our members are journalists, academics, activists and others who share a passion for open government as a means to ensure the proper functioning of our democracy. For over 30 years, FAC has helped journalists and ordinary citizens to gain access to their government; our group was instrumental in the drafting and passage of Proposition 59 in 2004, which amended the California Constitution to include a right of access to government records and meetings.

We applaud your proposal to establish a clear minimal period for the preservation of electronic communications. Your office is aware of the *Voice of San Diego* news articles by Jonah Valdez that revealed how many cities and school districts routinely and automatically purge email communications on a weekly or monthly basis. This problem of wholesale destruction of public records is by no means confined to San Diego County. In 2016, as reported by *Berkeleyside*, the Alameda County Grand Jury chastised Berkeley and other cities for automatically destroying broad swaths of email communications. See, "Grand Jury dings city of Berkeley on email transparency," *Berkeleyside*, by Emilie Raguso, 6/21/2016.

We are concerned that the language of the bill could have unintended consequences. Several sections of the Government Code, the Education Code and the California Code of Regulations require that email communications be stored for more than two years. See, for example,

Government Code sections 12236 and 34090. As currently worded, some government agencies might conclude that AB 1148 allows them to destroy email communications after two years, even though other statutes or regulations require longer retention policies.

The bill currently reads, "Notwithstanding any other law, a public agency shall, for the purpose of this chapter retain and preserve for at least 2 years, every writing transmitted by electronic mail." We suggest the following alternative language, "Unless a longer retention period is required by statute or regulation, a public agency shall, for the purpose of this chapter retain and preserve for at least 2 years, every writing transmitted by electronic mail or other similar messaging system." This latter clause would preclude evasion of the 2-year requirement by use of messaging other than electronic email.

Again, we fully support your efforts to close an unfortunate loophole in the CPRA. We are prepared to discuss our concerns and the suggested amendments with you or your staff at your convenience. We appreciate the opportunity to comment on this important legislation.

Sincerely,

David Snyder
Executive Director
First Amendment Coalition
dsnyder@firstamendmentcoalition.org
415-460-5060

Cc: Raquel Mason, Raquel.Mason@asm.ca.gov; Paul Dress, paul.dress@asm.ca.gov; Tom Clark, thomas.clark@asm.ca.gov